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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,956	01/25/2002	Eric McKinlay	50642.00027	8430

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OKAMOTO & BENEDICTO, LLP  
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EXAMINER
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REILLY, SEAN M

ART UNIT	PAPER NUMBER
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2153

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/056,956		MCKINLAY ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Sean Reilly		2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 23-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 23-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/19/06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office action is in response to Applicant's amendment and request for reconsideration filed on September 25, 2006. Claims 1-11 and 23-34 are presented for further examination. The previously indicated allowable claims are no longer deemed allowable in view of the Casagrande (WIPO International Publication Number WO 01/11466) reference submitted by Applicant in the IDS filed on October 19, 2006. In accordance with MPEP 706.07(a) this office action is made **FINAL** since the new grounds of rejection was necessitated by Applicant's submission of the IDS on October 19, 2006.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on October 19, 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 1. Claims 1-11 and 23-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casagrande (WIPO International Publication Number WO 01/11466) and Turner et al. (U.S. Patent Number 7,003,554; hereinafter Turner).**

With regard to claims 1, 2, 23-24, and 34, Casagrande disclosed a method for initiating a software download, comprising:

- providing a client computer running a browser application a page of a web site via a network, wherein a plug-in application resides in the web site, wherein the plug-in application comprises at least one of an ActiveX control (Casagrande pg 7, lines 14-21);
- determining whether the client computer is suitable for receiving the plug-in application (e.g. determining whether or the browser supports Active X control (pg 7, lines 14-16);
- downloading the plug-in application (ActiveX control) from the web site to the client computer via the network if the client computer is determined to be suitable for receiving the plug-in application, wherein the plug-in application has instructions for downloading a download manager application (AP) to the client computer via the network (e.g. an AP is downloaded by the active X control, pg 7, lines 22-27);
- downloading the download manager application to the client computer via the network utilizing the plug-in application, wherein the download manager application has instructions for downloading a software application to the client computer via the network (e.g. the AP downloads the requested software, see inter alia pg 6, lines 4-9 and pg 27-28); and
- downloading the software application to the client computer via the network utilizing the download manager application (see inter alia, pg 6, lines 4-9).

Casagrande disclosed substantial features of the claimed invention however, Casagrande failed to specifically recite downloading the various components in chunks. Nonetheless downloading files over the internet in chunks was widely known in the art at the time of Applicant's invention, as evidenced by at least Turner. In a similar system, Turner disclosed downloading files in chunks (portions) as opposed to a single download so that the download of a file can be performed when the network usage is idle and thus maximize the resources available to the client (see inter alia, Col 4, lines 25-41). Thus, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Casagrande's system to download both the download manager and software application files in chunks, as disclosed by Turner, in order to maximize the resources available to the client (Turner, Col 4, lines 25-41).

With further regard to claim 34 and depend claims 7-8 and 29-30, Casagrande failed to disclose determining the suitability of the client computer receiving the plug-in based on the number of times the client has accessed the web site and if the client is unsuitable then providing a different page. Nonetheless users that have already visited the page (and are capable of using ActiveX) will already have the plug-in installed. Download of the plug-in again to the client would be a waste of resources, for example both time and bandwidth would be lost. Thus, it would have be obvious to one of ordinary skill in the art at the time of Applicant's invention to only download the active X component to new clients visiting the webpage in order to provide faster download of the user requested software application and reduce the required network bandwidth. Note this modified system a returning client would receive a different page since the download of the AP would be immediately invoked by the active X control as opposed to a new user who would receive the active X control.

Furthermore it was well known in the art to limit the number of times a client can attempt to log in to a web site. It would have been obvious for one of ordinary skill in the art to determine the suitability of the client computer to include the number of times the client computer has attempted to access the web site because it would have improved the security of the system. Additionally, it was well known in the art to display an error page for login failure. It would have been obvious for one of ordinary skill in the art to display another web page such as an error page so as to indicate that the user has not been successfully logged in.

With regard to claims 3 and 25, Casagrande disclosed the client computer requires that the user authorize the downloading of the plug-in application (e.g. the user must allow active X control to run, pg 7, lines 28-29).

With regard to claims 4 and 26, Examiner takes official notice that it was notoriously well known in the art at the time Applicant's invention that browsers displayed a message to the user notifying the user to authorize the downloading of a plug-in, such as active X, since plug-ins propose a security risk to users and such a message ensures that the user trusts the script and does indeed actually wish to allow that particular script to execute on his or her computer. Thus, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to display a message to the user notifying the user to authorize the downloading of a plug-in in order to ensure that the user trusts the script and does indeed actually wish to allow that particular script to execute on his or her computer.

With regard to claims 5 and 27, Examiner takes official notice that it was notoriously well known in the art at the time Applicant's invention to provide a different webpage if the authorization to download the plug-in application is denied by the user. Such web pages

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typically advise the users of other options they may proceed with or further explain to the user why they should allow the active X software to run. These features help to ensure customer satisfaction. Thus, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to provide a different webpage if the authorization to download the plug-in application is denied by the user in order to help to ensure customer satisfaction.

With regard to claims 6 and 28, Examiner takes official notice that it was notoriously It is well known in the art to store information at a client (e.g. in cookies). It would have been obvious to store the authorization in the client because it would have enabled the usage of the plug-in at another time without having to ask for the user permission again.

With regard to claims 9 and 31, Casagrande does not specifically teach displaying a license agreement prior to downloading of the plug-in. However, it would have been obvious for one of ordinary skill in the art to do so because it would have provided a legal protection for the provider and/or a legal claim against the user for misuse of the application.

With regard to claims 10 and 32, Casagrande does not specifically teach using another web site to perform the suitability determination. It is well known in the art to use a third party to authenticate a user. It would have been obvious for one of ordinary skill in the art to contract with another web site to authenticate the user because it would have enabled the usage of a security site specialized in the process to perform the function.

With regard to claim 11 and 33, Casagrande does not specifically teach launching another window to determine the suitability of the client computer. It is well known in the art to provide login prompt via the same web page or in a separate window. Each has it own advantage and disadvantages. The usage of either method would have been readily apparent to one of ordinary

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skill in the art and would have been an obvious variation from each other. It would have been obvious to one of ordinary skill in the art to use a separate window because it would maintain separation of the initial page from the login prompt and permit each to be modified separately.

*Conclusion*

The prior art made of record, in PTO-892 form, and not relied upon is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Reilly whose telephone number is 571-272-4228. The examiner can normally be reached on M-F 8-5.




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



December 6, 2006



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER